IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 788 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G.S.R.T. CORPORATION

Versus

SHANKERBHAI PANABHAI BHOI

Appearance:

MR HARDIK C RAWAL for for
MR SN SHELAT for Petitioner No. 1
None appears for Respondent No. 1
Mr. L.R. Pujari, AGP for respondent No.2

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 29/06/2001

ORAL JUDGEMENT

This matter was first listed on 22nd June 2001. On that day none appeared for respondent No.1. Today also none is present, despite matter called out thrice, for respondent No.1. Mr. L.R. Pujari, learned AGP for respondent No.2.

2. In this Special Civil Application under Article 226 of the Constitution of India, the petitioner has been challenging the order dated 11.1.1988 passed by the Labour Court, Nadiad in Reference (LCN) No. 157 of 1984 directing reinstatement of respondent No.1 with 80% backwages and continunity of service. The said order also provides for the stoppage of two increments.

3. Shankerbhai Panabhai Bhoi (Respondent No.1) was serving with Gujarat State Road Transport Corporation ("G.S.R.T.C." for the short) as a Conductor; that the said employee remained unauthorisedly absent from 13.12.1978 to 16.1.1979 for which the employee was first served with show cause notice and thereafter served with the chargesheet. No reply either to the show cause or chargesheet is said to have been filed. Thereafter regular departmental inquiry was initiated against the employee. In the departmental proceedings also the employee did not remain present and allowed the inquiry proceedings to proceed ex-parte. The inquiry proceedings resulted into the dismissal of the employee from service. There is nothing to suggest on record that against the dismissal order in the inquiry proceedings the employee preferred any departmental appeal. Under Section 10 of the Industrial Disputes Act, dispute came to be raised as regards the dismissal of the employee leading to the filing of the Reference under I.D. Act. In the said Reference, the Labour Court passed the impugned order/award dated 11.11.1998 which is the subject matter of this writ petition.

4. It is submitted by Mr. Raval, learned counsel for the petitioner that the impugned order reinstating the petitioner in service and directing payment of 80% backwages is illegal and could not have been passed looking to the facts, namely gross misconduct of the respondent employee. It is stated that the respondent has been reinstated in service and he has been working with the petitioner Corporation; that no backwages should have been ordered inasmuch as it is the public money from which backwages would be required to be paid and that the passengers were put to inconvenience on account of the rescheduling of the bus-routes required to be done by the petitioner Corporation on account of misconduct of the petitioner.

5. It is suggested that even in the departmental inquiry, the respondent delinquent did not remain present nor did he give any explanation as to why he remained absent without prior intimation to the petitioner Corporation. The petitioner vide Exhibit "B" has filed a

statement in a tabular form suggesting the previous misconduct on various occasions. The petitioner is stated to have committed misconduct on 41 occasions as suggested from Exhibit B.

6. Mr. Hardik Raval, learned counsel for the petitioner has placed reliance on the decision in the case of Maganbhai L. Chauhan Vs. Divisional Controller, GSRTC - 1999 (1) G.L.H. Page 527 [DB] and contended that the employee connected with public services cannot be treated leniently especially when in the inquiry proceedings the misconduct is proved.

7. In the instant case, the respondent has been reinstated in service by the petitioner pursuant to the impugned order. I am not inclined to interfere with the reinstatement part of the order/award since disturbing the reinstatement would economically suffocate the family members of the respondent and the innocent family members would be the sufferers for no fault of their's.

8. As far as the relief of 80% backwages granted under the impugned order/award is concerned, the misconduct has been proved in the departmental proceedings which were allowed to go ex-parte by the petitioner. There is no explanation coming forth from the respondent-employee as to what prevented him from reporting to the duty for a period spanning over one month and one week. Generally reinstatement would be followed by the backwages, but the grant of and the extent thereof would depend upon the facts of each case. As pointed out above in the instant case, the conduct of the respondent employee is eloquent inasmuch as he did not reply the show cause notice and the chargesheet nor did he bother to remain present in the departmental inquiry and allowed the same to proceed ex-parte. It is stated by the learned counsel for the petitioner that the petitioner was dismissed from service on 30th June 1979 pursuant to the order passed in the departmental proceedings and the respondent-employee moved the State Government for reference under Section 10 of the Industrial Disputes Act in the year 1984. This would suggest that for more than 4 1/2 years the respondent-employee sat quite and did not move in the matter. Having regard to the facts and circumstances aforestated, the order as regards the grant of backwages deserves to be set aside.

9. In the result, the impugned order dated 11.1.1988 in Reference (LCN) No. 157 of 1984 passed by the Labour Court, Nadiad, is set aside to the extent it

awards/grants 80% of backwages to respondent No.1 whereas rest of the impugned order does not call for any interference. The petition is disposed of accordingly. Rule made absolute to the above extent. No orders as to cost.

rmr. [N.G. Nandi,J.]